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FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY
REGULATORY COMMISSION

Electricity Market Design and Structure)	Docket No. RM01-12-000
)	
Midwest Independent System Operator)	Docket No. RT01-87-000

COMMENTS OF THE
MICHIGAN PUBLIC SERVICE COMMISSION

Pursuant to the Commission's Notice of Technical Conference issued on February 5, 2002 in the referenced lead docket,¹ and the schedule announced therein for filing comments, the Michigan Public Service Commission ("MPSC") hereby files its initial comments on the allocation of RTO characteristics and functions between separate organizations within an RTO.

MPSC has had the opportunity to analyze the allocation of RTO characteristics in the context of participating in the November 30, 2001, joint response by nine "Midwest State Commissions" to a letter from the Commission dated November 9, 2001. At that time, the Midwest State Commissions concluded that:

The apportionment of functions among various entities within a hybrid RTO has evolved into one of the critical issues before the Commission, particularly in situations, as in the Midwest, where a number of entities either are vying for RTO status or are negotiating the terms and conditions of joining an RTO as a Transco or an Independent Transmission Company ("ITC").

The Midwest State Commissions articulated the view of nine states, including MPSC, that the MISO "Appendix F" type approach to allocating RTO functions to an ITC provided a workable model in the context of a case-by-case review of individual ITC proposals. In this respect, the Midwest Commission's suggested that the most important action the Commission

¹ Pursuant to the Commission's direction, these comments were being cross-filed in Docket No. RT01-87-000.

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can take to advance the RTO process is to provide prompt guidance on questions relating to the allocation of RTO functions to ITCs.²

Much progress has been made towards this goal during the ensuing three month period since the November 30, 2001 filing by the Midwest State Commissions. Most noteworthy is the Commission's order approving the allocation of functions between International Transmission Company and the Midwest ISO. International Transmission Co., 97 FERC ¶ 61,328 (2001) ("*ITC Order*") The *ITC Order* adopted an allocation of RTO functions consistent with the positions set forth by the Midwest State Commissions in their November 30 letter. As explained by Joseph Welch, the spokesperson on behalf of ITC at the Commission's February 19, 2002, public conference, International Transmission's model allocates three functions to an ITC: (1) coordinated maintenance in conjunction with the RTO; (2) coordinated planning in conjunction with the RTO; and (3) local tariff control.

MPSC endorses a continuation of the case-by-case approach taken by the Commission in the *ITC Order* for resolving the allocation of RTO functions for other ITCs. While the *ITC Order* provides the framework for reviewing other ITC proposals, MPSC believes that it is premature at this stage to treat the *ITC* model as the cookie cutter for all other cases. A case-by-case review of ITC proposals will provide the necessary flexibility to allow an optimum allocation of RTO functions to evolve with the market. For example, even within the context of the *ITC Order*, the Commission deferred ruling on the appropriateness of the ITC exercising control over a local tariff until such a tariff is submitted for Commission review of its full details. This approach of deferring a ruling on the rate design function, until the parties and the Commission benefit from further details and experience, should be used for other functions where the details need to be worked out as the RTO/ITC process unfolds. National Grid and

² MPSC is including a copy of the November 30, 2001 letter as an attachment for consideration in this docket.

MISO appear to be in agreement that all of the details on all functional apportionment cannot be worked out in advance. As explained in the February 28, 2002 Response of National Grid to the Technical Conference:

The RTO will have overall control of the region and will focus on the "big" picture. The ITC will focus on its area and provide input to the RTO. When all parties agree that the ultimate authority to make decisions affecting the RTO rests with the RTO, and that its decisions are to be followed during any dispute resolution, then differences such as which entity makes calculations versus providing input into the calculations are mere semantics and can be worked out by the parties as the RTO/ITC process unfolds. William Phillips of MISO seemingly agrees, 'I think the Appendix I division of responsibility can work. I won't tell you that all the issues have been resolved. For example, I can't tell you today that we have a complete answer as to how congestion management will work with differing tariffs and their effects on the same facilities. But we think that those problems can be figured out, or if they can't, then we'll be back at the table with you.'³

While National Grid and MISO recognize that various issues need to be worked out after gaining some experience, MPSC is not in agreement as to how such details should be worked out. National Grid and MISO would like to have the discretion to work out their issues without prior Commission approval. MPSC is convinced that the Commission needs to defer ruling on issues which require further development of a record. Based on further details filed by the RTO, comments from the parties and with the benefit of experience, the Commission should refine and finalize the allocation of RTO functions on a case-by-case basis.

³ National Grid Answer at 5.

MPSC submits that the planning function is an example of a function that will benefit from an ongoing case-by-case review. The coordinated ITC/RTO planning function approved in the *ITC* Order establishes a balanced starting point for a planning structure which allows for local planning and input at the ITC levels, while leaving the RTO in charge of the overall regional planning.

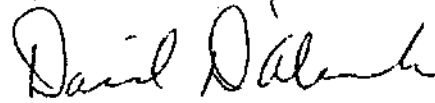
This structure provides the appropriate deference to planning decisions based on local input from all industry and consumer sectors closest to the ground, while ensuring that individual ITC planning does not conflict with the broader interests of the overall RTO. Over time and with experience, there may be further details to be worked out. Any proposed changes can be filed with the Commission for review and approval.

In conclusion, MPSC urges the Commission to move forward and act expeditiously on pending ITC proposals by approving the delegation of only those functions where, as in the case of International Transmission Company, and as discussed in the Midwest State Commission Response, it can be determined that they can be appropriately performed at the ITC level. As to other functions an ITC may seek to assume, decisions should be deferred pending further review and experience-- the approach adopted in Appendix I to the MISO agreement. This approach will allow the RTO/ITC geographic scope to be approved and for the RTO to become up and running while these other issues are worked out.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION**

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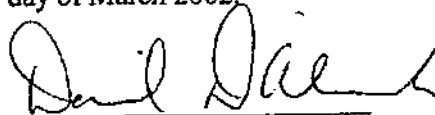
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March 12, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service list compiled in Docket No. RT01-87-000 by the Secretary in this proceeding.

Dated at Washington, D.C., this 12th day of March 2002.



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FEDERAL ENERGY
REGULATORY COMMISSION

November 30, 2001

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, DC 20426

Re: Docket Nos. RT01-88-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012; ER99-3144-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014; EC99-80-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014; EL01-80-002; RT01-37-000; RT01-84-000, -001; RT01-26-000, -001; ER01-123-000, -001, -002, -003, -004; ER01-2995-000; ER01-2993-000; ER01-2999-000; ER01-2997-000; ER01-2992-000; RT01-87-000, -001, -002; ER01-780-003; ER01-966-002; ER01-3000-000; RT01-101-000; EC01-146-000; ER00-3295-000, -001, -002; EC01-137-000; EL01-116-000; and ER02-108-000

Dear Secretary Boergers,

On November 9, 2001, the Commission sent a letter to various state public utility commissions concerning RTO formation in the Midwest. This response is filed on behalf of the state public utility commissions of Michigan, North Dakota, Iowa, Arkansas, Pennsylvania, Virginia, Wisconsin, Oklahoma and Kentucky (hereinafter "Midwest State Commissions") and reflects their consensus view on the questions posed by the Commission. Several of the state signatories to this letter are also submitting separate letters supplementing their responses. The Midwest State Commissions thank the Commission for its interest in their viewpoints and for its efforts to promote broad, competitive regional markets.

1. What RTO structure – a single RTO, multiple RTOs with seams agreements, or other – would most efficiently administer the transmission system and facilitate electric power trading to meet the needs of customers over the entire Midwest?

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Response:

The short answer to this question is that a single RTO would most efficiently administer the transmission system and facilitate electric power trading in the Midwest.¹ Order No. 2000 establishes the sound principle that an RTO must be of sufficient scope and configuration to promote efficient trading to the benefit of consumers. Several midwestern state commissions, in fact, have advocated a single regional transmission organization even before issuance of the NOPR that led to Order No. 2000, urging that approach in a Section 206 filing in February 1998.²

Each region of the country has its own unique circumstances, institutions and past history that must be considered in deciding the proper scope and governance structure for the RTO(s) in that region. For example, it might well be feasible in some regions to achieve the functional equivalent of a single RTO using multiple RTOs through agreements to establish a single regionwide rate, adopt common market design, joint planning, etc. The Midwest State Commissions' experience to date with RTO formation in the Midwest, however, leads us to conclude that in the Midwest, this approach has not worked and will not work.

Last spring, the Commission approved a settlement agreement that, in theory, would have allowed the Midwest ISO and a proposed Alliance RTO to achieve through an Inter-RTO Cooperation Agreement (IRCA) the goal of a seamless energy market in the midwest.³ Since that time, however, there has been little progress.⁴ That fact, coupled with changed circumstances, leads us to conclude that an IRCA approach may no longer be reasonable and that only a single Midwest RTO can achieve the goals of Order No. 2000.

It bears no small emphasis that only the Midwest ISO, as between it and the Alliance Companies, currently has a control center and an infrastructure in place to provide operational control over the transmission facilities under its responsibility. Equally important, despite the

¹ By the term "Midwest," the signatories to this letter mean that region as traditionally defined. As the Commission is aware, the proposed Alliance RTO footprint includes certain states not traditionally considered part of the Midwest (e.g., Virginia, North Carolina and Pennsylvania). Subject to its comments filed separately on November 30, 2001, the Virginia State Corporation Commission joins in and adopts these comments. Certain other state commissions are also commenting separately, as well as joining in the instant response. Kentucky is not filing a separate letter but would note that, even with a single Midwest RTO, there remain seams and structural issues to address, particularly as they pertain to the relationship between TVA and municipal utilities and rural electric cooperatives in Kentucky.

² The petition, submitted in Docket No. PL98-3, was filed on behalf of the state regulatory commissions of Arkansas, Illinois, Kansas, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania and Texas.

³ *Illinois Power Co.*, 95 FERC ¶ 61,183 at 61,640, 61,648, 61,650 (2001).

⁴ See, e.g., Protest of the Michigan Public Service Commission, Illinois Commerce Commission, et al. in *Alliance Cos.*, Docket Nos. ER99-3144-009, EC99-80-009, RT01-88-001 (filed June 18, 2001). See also, Comments of the Illinois Commerce Commission in Midwest ISO, Docket No. RT01-87-001 (filed September 21, 2001); Request for Rehearing of the Illinois Commerce Commission, the Michigan Public Service Commission, the Indiana Utility Regulatory Commission, the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio in *Alliance Cos.*, Docket Nos. RT01-88-000 (filed August 13, 2001).

Response:

The apportionment of functions among various entities within a hybrid RTO has evolved into one of the critical issues pending before the Commission, particularly in situations, as in the Midwest, where a number of entities either are vying for RTO status or are negotiating the terms and conditions of joining an RTO as a Transco or an Independent Transmission Company ("ITC"). In the Midwest, moreover, defining and distinguishing between for profit Transcos and ITCs is a critical part of the analysis. To the Midwest State Commissions' knowledge, there are not clearly defined distinctions between Transcos and ITCs. The Transcos that have been proposed, however, have tended to be structured as RTOs. The Alliance Transco is such a model. By contrast, many of the ITCs that have been proposed have been structured simply as transmission companies operating within an RTO. The ITCs within the Midwest ISO fall into the latter category. For purposes of these responses, the Midwest State Commissions therefore find it useful to define Transcos as companies intended to be RTOs or to assume most of their functions. Under this definition there would be no more than one Transco per RTO. By contrast, the Midwest State Commissions define an ITC as one of several independent transmission companies that may operate within an RTO. Both Transcos and ITCs may qualify as independent transmission companies operating within an RTO where passive ownership by market participants can be established, but, as discussed later, the Midwest State Commissions believe that the greater the degree of passive ownership by market participants the less their level of independence and the fewer functions they should be allowed to perform within an RTO.

As a very general proposition, if a Transco had ownership of *all* of the transmission facilities within a properly configured region of adequate scope, and if it was fully independent of market participants (ie, unencumbered even by passive ownership interests held by market participants) it could be structured to assume the functions of the RTO other than reliability assurance and market monitoring.⁸ In such a situation, for example, the Transco could be structured so that before it undertook transmission expansions, it would have to place congestion solutions out for bid. In this way, merchant transmission companies, demand side management companies and distributed generation providers could vie with the Transco on even terms in a transparent process for relief of congestion and reliability problems.

The problem with the single for-profit Transco as RTO model described above, however, is that it does not appear likely to develop in the Midwest, given the Commission's RTO-related precedent to date, the structures of the various proposals⁹ and the actions of the transmission

⁸ In this respect, the Midwest State Commissions agree with National Grid that the operation of energy markets, market monitoring, and interregional market development are not proper functions for a for-profit Transco to perform. See "Response of National Grid USA to Questions Posed by the Commission," Docket No. EX02-3-000 (filed November 2, 2001).

⁹ The Transco proposed by Alliance is not fully divested of market participant ownership. Indeed, the already substantial passive ownership interests of market participants can even increase under the Alliance model. This market participant presence poses a continuous and burdensome challenge to the Transco's independence. As important, the Alliance Transco would not even own all the transmission within the Alliance region, much less in the broader Midwest region that would make a more logical and efficient configuration. Indeed, one of the major Alliance participants, International Transmission Company, has withdrawn from Alliance. In these circumstances,

owners in the region.¹⁰ In other words, under present circumstances, there seems to be scant likelihood that the Alliance Transco owners would relinquish all passive ownership interests or that the various ITCs within MISO will agree to merge with themselves and the Alliance Transco to form a single, fully independent Transco. As a practical matter, therefore, in deciding how to apportion functions within an RTO, what the Commission may be left with addressing is the division of responsibilities between the RTO and its constituent multiple ITCs. The remainder of the Midwest State Commission responses therefore assume this multiple ITC-within-an-RTO model and it is this model which the Midwest State Commissions have in mind when they discuss the concept of a hybrid RTO.

Keeping the above-defined terms in mind, the states generally favor a case-by-case approach to determine how functions should be shared among members of a hybrid RTO. Such an approach allows for flexibility to address unique regional concerns and to encourage the formation of innovative structures that improve the overall menu and quality of services offered by an RTO. For example, the Commission may determine that ITCs must be truly independent, with no passive ownership in other energy companies before becoming eligible to assume responsibility for certain RTO functions. Further, upon obtaining independent status, the ITCs must then maintain such status or lose any right they have been granted to perform RTO functions. Moreover as regional markets evolve and mature, a case-by-case approach will allow the Commission policies regarding sharing of functions to evolve with the markets.

There are, however, certain core functions that the states believe must be performed by the RTO, and that should not be delegated down to an ITC or a Transco. A brief discussion of the pro and cons of sharing various RTO characteristics and functions in a multiple ITC-within-an-RTO framework is set forth below:

A. Characteristics

1. Independence

Decisionmaking functions¹¹ should not be performed by an ITC if the independence of the RTO would be compromised thereby. In this respect, the Midwest State Commissions believe that any entity which owns some but not all transmission assets covered by its functions

an Alliance-type Transco simply could not assume many of the RTO functions without creating more problems than it solves. For example, it could not assume the entire transmission planning function because it would not be the only transmission company within the RTO. Nor could it be in charge of tariff administration – again because it could make decisions that would be in conflict with other transmission companies within the RTO.

¹⁰ Only one Alliance company to date (Commonwealth) has indicated a willingness to divest its transmission facilities. As important, the transmission owners within the Midwest ISO appear unwilling to adopt the Alliance Transco model.

¹¹ As the Midwest State Commissions explain, *infra*, ITCs and Transcos within an RTO could assume certain ~~series~~ such as transmission planning and service curtailment, provided that the ultimate decisionmaking function ~~remains~~ in the hands of the independent RTO.